IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9231 OF 2004

Sara Resinous Chemicals Pvt.Ltd. Petitidoner

versus

UCO Bank and others Respondents

P.S.Dani for Ms.Nisha Valani, adv. for petitioner

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 3rd December 2004

PC :

1. Heard Mr.Dani, learned counsel appearing for petitioner. Perused the order passed by Debt Recovery Appellate Tribunal (hereinafter referred to as "DRAT" for the sake of brevity) in Miscellaneous Appeal No.282 of 2004 as well as order passed by Presiding Officer, DRT-II, Mumbai (hereinafter referred to as "DRT" for the sake of brevity) dated 15th July 2004 in Original Application No.338 of 2001.

2. It appears that a common order below Exhibits 27 and 35 was passed by the learned Presiding

Officer. Needless to state that Original Application No.338 of 2001 is filed by respondent no.1 bank against Orient Plywood & Veneering Industries Limited and six others for recovery of diverse amounts. An application (Chamber Summons No.242 of 1991, now renumbered as Exhibit-35) was taken out by UCO Bank (applicant) for impleading petitioner as defendant no.8 and consequential amendments. This Chamber Summons upon transfer of proceedings to the DRT came to be renumbered.

3. Petitioner was served with the application and he filed reply. The reply contained preliminary objections (Exhibit-27). It was contended that the Tribunal has no jurisdiction to go into the rights of petitioner as tenant in respect of office premises being Block No.34-B in Jolly Maker Chamber Nos.2 to 5, Nariman Point, Mumbai 400 021.

4. The DRT has allowed the application for petitioner’s impleadment by observing that the property in question was equitably mortgaged by the borrower in favour of bank on 18th March 1982. At that time an undertaking was given that the said property would not be transferred or alienated in any manner. This Court had

appointed Receiver when the suit was instituted by bank on the Original Side. The order appointing Receiver was made absolute in the year 1991. When the Receiver went to take possession, he noticed the presence of respondent in the mortgaged premises. In this view of the matter, the DRT held that presence of petitioner is necessary for effectively and properly adjudicating upon the controversy. If the bank succeeds, then naturally the mortgage would have to be enforced. Since the petitioner is claiming a right in the property, his presence would be necessary. This order of DRT was challenged in the abovementioned Miscellaneous Appeal.

5. Learned Chairperson was of the view that the amendment application was allowed and the amendment having been carried out, the appeal preferred by petitioner is rendered infructuous.

6. Having heard Mr.Dani, we are of the view that it is not necessary to decide the larger question whether the appeal in the facts and circumstances would be rendered infructuous merely because amendment is carried out to the proceedings. We are of the view that it is also not necessary to finally pronounce upon the plea of the petitioner

that the impleadment could not have been ordered as the claim against the petitioner is time barred. In our view, leaving all contentions including the bar of limitation open for adjudication at an appropriate stage, the present petition can be conveniently disposed of.

7. We are in agreement with the view that presence of petitioner would be necessary for effective and complete adjudication of the controversy in the original application. Therefore, order impleading the petitioner does not require any interference at our hands.

8. However, we clarify that it will be open for the petitioner to raise all contentions including the plea of limitation and neither the order of learned Presiding Officer nor that of the Chairperson would constitute a bar in the petitioner raising these pleas. The contentions of both sides on these aspects are expressly kept open for being adjudicated in the original application. With this clarification the writ petition stands disposed of. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)